

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.233 of 1991

Against the judgment of conviction dated 11.04.1991 and order of sentence dated 30.05.1991, passed by Shree Sudarshan Upadhyay, learned Additional Sessions Judge-III, Nalanda at Biharsharif in Sessions Trial No.333 of 1987.

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1. Sheo Kumar Yadav, son of Sheo Sharan Yadav.
 2. Sheo Sharan Yadav, son of Late Bipat Yadav.
 3. Rajendra Yadav, son of Late Balgovind Yadav.
 4. Sidheshwar Yadav, son of Chintaman Yadav.
 5. Ramdeo Yadav, son of Late Balgovind Yadav.

All are resident of village-Ranipur, P.S.-Telhara (Ekangarsarai), District-Nalanda. Appellants.

Versus

The State of Bihar.

.... Respondent.

WITH

Criminal Appeal (DB) No. 286 of 1991

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Raj Nandan Prasad @ Raj Nandan Yadav, son of Sheo Sharan Yadav, resident of village-Ranipur, P.S.-Telhara (Ekangarsarai), District-Nalanda.

.... Appellant.

Versus

The State of Bihar.

.... Respondent.

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Appearance :

For the Appellants : Mr. Pramod Kumar, Adv.

For the State : Mr. Ajay Mishra, A.P.P.

For the Informant : Mr. Ram Suhawan Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 10-11-2014

These two appeals by six appellants in all arise from the judgment of conviction dated 11.04.1991 and order of sentence dated 30.05.1991, passed by the learned Additional Sessions Judge-III, Nalanda at Biharsharif, by which appellant- Raj Nandan Prasad @ Raj Nandan Yadav has been found guilty for an offence under Section-302 and

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Section-148 of the Indian Penal Code (hereinafter in short 'IPC'), appellant-Sheo Sharan Yadav, the father of the appellant- Raj Nandan Prasad @ Raj Nandan Yadav has been found guilty for an offence under Section-302/114 IPC as well as under Section-302/149/147 IPC. The rest four appellants, i.e., Sheo Kumar Yadav, Rajendra Yadav, Sidheshwar Yadav and Ramdeo Yadav, have been found guilty under Section-302 IPC read with Section-149 IPC and Section-147 IPC or Section-148 of the IPC as the case may be. They have all been sentenced to imprisonment for life but no sentences were separately awarded to them for distinct offences.

Heard learned counsel for the appellants, Mr. Ajay Mishra, learned A.P.P. and learned counsel for the informant, who assisted the learned A.P.P.

The prosecution case is based upon the fardbeyan of one Baleshwar Yadav (P.W.9) recorded at about 2:45 pm on 09.05.1986 with regard to the incident which took place on the same day at about 12 noon. It was recorded by Pradip Singh (P.W.10), who is the Assistant Sub-Inspector of Police and the Investigating Officer. In the fardbeyan, it is stated that at about 12 noon on that day a

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quarrel took place between the informant-Baleshwar Yadav (P.W.9) and the appellant-Sheo Kumar Yadav with regard to irrigating onion crops. Appellant-Sheo Kumar Yadav allegedly threatened the informant that he is going home and would come back and teach him a lesson. The field is about 120 yards from home. The informant-Baleshwar Yadav followed the appellant-Sheo Kumar Yadav but then waited at Devi Asthan which is about 20 yards from the house from there he saw the other appellants come out of their houses armed with lathi, sword and the appellant-Raj Nandan Prasad @ Raj Nandan Yadav carrying a dagger (chhura) and surrounded the house of the informant. When the informant's brother Jageshwar Prasad, after having taken his meal, came out from his house the appellant-Sheo Sharan Yadav gave an order to his son Raj Nandan Yadav to kill Jageshwar Prasad upon which Raj Nandan Yadav gave a dagger blow on the right upper chest of Jageshwar Prasad and all of them ran away while he fell down. Jageshwar Prasad then pulled out the dagger and died immediately. This incident was allegedly seen by Rajeshwar Prasad (P.W.2), Shivpati Yadav (P.W.4) and Jagdish Prasad (P.W.8) as well. In the fardbeyan itself, it is

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stated that there was no quarrel between the parties from before of any nature. Upon this fardbeyan being recorded, it was sent to Ekangarsarai Police Station where it was formally registered as an F.I.R. at about 6:15 pm. Inquest report was prepared and the body was sent for postmortem. The postmortem report having been submitted, the case was investigated, the charge-sheet was then filed against all the six appellants and the case was committed to the Court of Sessions. They pleaded innocence and they were tried and convicted as aforesaid.

Learned counsel for the appellants first submitted that if we look to the fardbeyan and the F.I.R., which is registered for an offence under Section-302/34 IPC, against all the accused persons but when it comes to the trial, the Sessions Court, has convicted them, apart from the appellant-Raj Nandan Prasad @ Raj Nandan Yadav, with the aid of Section-149 IPC and also apart from the appellant-Sheo Sharan Yadav who has been held guilty with the aid of Section-114 IPC. He submits that if the sequence of the events is seen then quarrel had taken place between appellant-Sheo Kumar Yadav and the informant-Baleshwar Yadav at the agriculture field. Thereafter, there

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is no evidence that Sheo Kumar Yadav at all communicated with any of the other appellants or for that matter that any of the other appellants communicated with others before precipitating the matter.

Learned A.P.P. and the counsel for the informant submit that everything happened in quick succession at the spur of the moment. We agree to this submission but then it follows that if this was so then how could they be charged either with the aid of Section-34 IPC or Section-149 IPC. There could not be a common intention or a common object as they had not communicated with others. Accordingly, at the very outset, we have no option but to hold that taking aid of Section-149 IPC to convict all the persons would not correct. We may buttress our conclusion by adding that admittedly, as per prosecution evidence, the quarrel was between the appellant-Sheo Kumar Yadav and the informant-Baleshwar Yadav at the agriculture field. As per the informant himself, there was no earlier dispute between the parties of any nature. Then why all of a sudden Raj Nandan Yadav would stab Jageshwar Prasad, the deceased and even if he did, how can a common intention be attributed to the others. They had

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come out of separate houses.



When we go through the entire evidence we find that so far as the appellants, Rajendra Yadav, Sidheshwar Yadav and Ramdeo Yadav are concerned or for that matter Sheo Kumar Yadav, there is absolutely no averment of them either having spoken or done anything in furtherance of killing of Jageshwar Prasad. There is no evidence to connect them with the crime except their presence in the vicinity. The appellants, Rajendra Yadav, Sidheshwar Yadav and Ramdeo Yadav do not stay in the same house. They are not immediate relations. No relationship vis-à-vis Rajendra Yadav, Sidheshwar Yadav and Ramdeo Yadav had been established with the appellant- Sheo Sharan Yadav whose sons are Sheo Kumar Yadav and Raj Nandan Yadav. Why we have noted all this is that on this short issue we find that the conviction of appellants, Sheo Kumar Yadav, Rajendra Yadav, Sidheshwar Yadav and Ramdeo Yadav cannot be sustained. They have to be acquitted of all the charges levelled against them.

Now, coming to the case of the appellants, Sheo Sharan Yadav and Raj Nandan Yadav. It is not in

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dispute that the deceased, Jageshwar Prasad died as a consequence of a singular dagger blow through the right side of his chest. It punctured and fatally injured vital parts including lungs. There is some dispute with regard to the weapon. The prosecution alleges that when Jageshwar Prasad fell down, he himself pulled out the dagger and fell on the ground, which dagger was later seized by the police. Though there were eye witnesses to the entire occurrence, they were not made the seizure list witness in respect of dagger. It was another person, Ram Sharan Prasad Yadav (P.W.6) who was made the witness. He happens to be the brother of one of the eye witnesses, i.e., Jagdish Prasad (P.W.8). It is curious that the dagger was not sent for forensic examination in respect of blood found on it or for finger print but we are of the view that even though this may not be the weapon proved to be used, the evidence of four eye witnesses is consistent about the appellant-Raj Nandan Prasad @ Raj Nandan Yadav using the dagger and fatally assaulting Jageshwar Prasad in regard to which there is no contradiction or inconsistency. All the four eye witnesses including the informant are consistent that the appellant-Sheo Sharan Yadav and others had surrounded

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the house of Baleshwar Yadav and the moment Jageshwar Prasad came out appellant-Sheo Sharan Yadav ordered his son, Raj Nandan Yadav to stab Jageshwar Prasad. It may be noticed here that in the first information report itself the names of Rajeshwar Prasad (P.W.2), Shivpati Yadav (P.W.4) and Jagdish Prasad (P.W.8) have been mentioned as eye witnesses. They have supported the prosecution case.

Thus, we find that the prosecution case in so far as these two appellants are concerned, i.e., Sheo Sharan Yadav and Raj Nandan Prasad @ Raj Nandan Yadav, is consistent and we have no reason to disbelieve that Sheo Sharan Yadav had ordered his son, Raj Nandan Yadav to stab Jageshwar Prasad. It would be that he had instigated the crime. That would be abatement under Section-107 IPC and thus punishable under Section-114 IPC, the substantive offence being under Section-302 IPC. We see no reason to interfere in his conviction. Similarly, when we come to the appellant-Raj Nandan Prasad @ Raj Nandan Yadav, the evidence is consistent. All the four persons clearly state seeing him stab the deceased, Jageshwar Prasad because of which Jageshwar Prasad fell down dead. That being so, the

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evidence being unimpeachable, we have no option but to hold that the conviction of appellant-Sheo Sharan Yadav and appellant-Raj Nandan Prasad @ Raj Nandan Yadav cannot be interfered with. The criminal appeals, in so far as these two appellants are concerned, stands dismissed. The criminal appeals in respect of the rest four appellants, namely, Sheo Kumar Yadav, Rajendra Yadav, Sidheshwar Yadav and Ramdeo Yadav is allowed and their conviction is set aside. They are freed from liabilities of their bail bonds. The bail bonds of appellants, Sheo Sharan Yadav and Raj Nandan Prasad @ Raj Nandan Yadav stands cancelled. They are directed to surrender before the Trial Court forthwith. Let the Lower Court's record be returned forthwith.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

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